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Clerk U.S. District & Bankruptcy  
Courts for the District of Columbia

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

#17141-045  
PATRICIA THYER,  
F.C.I. THIAHAYSSB  
Plaintiff,  
501 CAPITAL CIRCLE N.E.  
v. THIAHAYSSB, FL. 32301

UNITED STATES DEPARTMENT  
OF JUSTICE OFFICE OF INFOR-  
MATION POLICY,

Defendant.

Case: 1:12-cv-00606  
Assigned To : Wilkins, Robert L  
Assign. Date : 4/16/2012  
Description: FOIA/Privacy Act

COMPLAINT UNDER THE FREEDOM OF INFORMATION ACT

NOW COMES Plaintiff, Patricia Thyer (hereinafter "Thyer"), as a  
pro se prisoner, alleging as follows:

INTRODUCTION

1. This is an action under the Freedom of Information Act ("FOIA"),  
5 U.S.C. §552, et. seq., brought to seek access to records pertaining  
to the Plaintiff, Patricia Thyer, from Case No: 6:04-cr-03105-RED-1,  
in the United States District Court, Western District of Missouri,  
Springfield Division.

2. Of particular interest is the complaint used to underlie the  
case, because it appears to have been a fraudulent ploy in which  
Thyer's ex-husband, David Thyer, colluded with law enforcement to  
evade a previously existing divorce decree judgment in which the  
Court ordered him to pay \$594,000, except the government refuses to  
produce a copy of it.

3. It is recognized that public interest in disclosure under FOIA  
is greatest when there is evidence of governmental wrongdoing. See

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**Lissener v. United States Custom Service**, 241 F 3d 1220 (CA9 2001). "Customs argues that it need not disclose the information because **Lissner** failed to demonstrate any misconduct on the part of Customs. Customs is mistaken. While "the public interest in ensuring the integrity and reliability of government investigation procedures is greater where there is some evidence of wrongdoing on the part of the government official". **Hunt v. Federal Bureau of Investigation**, 972 F 2d 286, 289, "nothing in the statutory command [of the FOIA] conditions agency compliance on the requesting party showing that he has knowledge of misfeasance by the agency". **Favish v. Office of Indep. Counsel**, 217 F 3d 1172 (CA9 2000). **Id.**, at 1223. The public has a great interest in being enlightened about the type of malfeasance by this senior FBI official--an action called 'intolerable' by the FBI--an interest that is not outweighed by his own interest in personal privacy". **Stern v. FBI**, 737 F 2d 84, 94 (D.C. Cir. 1984).

4. A waiver may not be asserted where a document is required to be disclosed under FOIA. "Additionally, while information disclosed during discovery is limited to the parties and can be subject to protective orders against further disclosure when, a document must be disclosed under FOIA, it must be disclosed to the general public and the identity of the requester is irrelevant to whether disclosure is required. See **FTC v. Grolier, Inc.**, 46 US 19, 28, 103 S. Ct. 2209, 76 L Ed 2d 387 (1983); **Loving v. Dept. of Defense**, 550 F 3d 32, 39, 384 US Appx D.C. 32 (D.C. Cir. 2008); **North [v. Walsh]**, 881 F 2d [1088], 1095-99 (D.C. Cir. 1989)".

5. Where the government engaged in bad faith and fraudulent dealings with an accused, inserting a FOIA waiver into a plea agreement

to evade subsequent discovery or disclosure of such misconduct, it invalidates the plea agreement. "[A] plea agreement is a contract. **United States v. Pollard**, 295 US Appx. D.C. 7, 959 F 2d 1011, 1022 (D.C. Cir. 1992). As a consequence, courts will look to principles of contract law to determine whether a plea agreement has been breached. See, e.g., **United States v. Papaleo**, 853 F 2d 16, 19 (CA1 1988); **United States v. McGovern**, 822 F 2d 739, 743 (CA8 1987); **United States v. Jones**, 58 F 3d 688, 691 (D.C. Cir. 1995)". "The plea agreement, however, provides additional protection for **Jones**. Like all contracts, it includes an implied obligation of good faith and fair dealing. Restatement (Second) of Contracts §205 (1981); see also [**United States v.**] **Sparks**, [305 U.S. App. D.C. 286], 20 F 3d [476,] 479 [D.C. Cir. 1994](noting Government's concession that non-performance of its contingent obligation in plea agreement is reviewable for bad faith). Thus, while the plea agreement did not guarantee **Jones** a section 5K1.1 motion, we believe it did guarantee fair dealing". **Id.**, at 692.

6. There is no benefit to an accused to enter into a plea agreement, giving up important rights and agreeing to waivers, such as a FOIA waiver, in the absence of any concessions from the government.

7. A defense attorney's advice to accept a plea agreement causes it to be an involuntary contract where the government withholds exculpatory information. "There are many ways in which an agreement, or aspects of an agreement, could be entered into without the requisite knowledge or voluntariness. Examples include an agreement entered into upon the ineffective assistance of counsel or undue coercion". **Andis**, 333 F 3d at 890.

8. A defense attorney's advice to accept a plea agreement causes

it to be unknowing and involuntary where a financial conflict of interest on behalf of the attorney or his associates causes him or her to coerce the defendant into accepting it. "An actual conflict of interest is one that constrains an attorney to make a choice advancing his own interests to the detriment of his client's interests". **United States v. Toms**, 396 F 3d 427 (D.C.Cir. 2004); **United States v. Bruce**, 89 F 3d 886 (D.C.Cir. 1996).

9. The federal government should not involve itself in the domestic relations between a husband and wife. "The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States". In **re Burrus**, 136 US 586, 593-594 (1890).

10. The federal government has no legitimate business engaging in activity to aid and abet fraudulent conveyances, enable or cause willful disobedience to a preexisting lawful state court judgment. See 28 USC §1738. In **Mills v. Duryee**, 11 US 481 (1813), the Supreme Court rejected the contention that the Act of 1790, now codified as 28 USC §1738, did not apply to federal courts, the court stating that the words of the Act afford a decisive answer, for they extend "to every court within the United States. Finding that the judgment of the state Supreme Court in question was conclusive upon the parties in that state, the court ruled that the judgment must also be conclusive as to the matter covered by the judgment in the present case before the federal court". According to **San Remo Hotel, L.P. v. City & County of San Francisco**, 125 S. Ct. 249, (2005), the full-faith-and-credit statute (28 U.S.C. §1738), implements the general rule that parties should not be permitted to relitigate issues that have been

resolved by courts of competent jurisdiction. "Under the doctrine of collateral estoppel (also called issue preclusion), once a Court has decided an issue of fact or law necessary to the court's judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case". The Supreme Court held in **Christmas v. Russell**, 72 US 290 (1866), that the plea of fraud was not a valid defense by a debtor to a creditor's suit in federal court brought to enforce a prior state court judgment.

11. Spousal battering is a substantial problem in the United States. As admitted on the record of the Supreme Court, in **Planned Parenthood v. Casey**, 505 US 833, 88 8 (1992), "studies reveal that family violence occurs in two million families in the United States. This figure, however, is a conservative one that substantially understates (because battering is usually not reported until it reaches life-threatening proportions) the actual number of families affected by domestic violence. In fact, researchers estimate that one of every two women will be battered at some time in their life". "Secrecy typically shrouds abusive families. Family members are instructed not to tell anyone, especially police or doctors, about the abuse and violence. Battering husbands often threaten their wives or her children with further abuse if she tells an outsider of the violence and tells her that nobody will believe her. A battered woman, therefore, is highly unlikely to disclose the violence against her for fear of retaliation by the abuser". *Id.*, at 889-90.

12. FOIA was designed to guard against government corruption and to hold the government accountable for its actions. See **Virgil v.**

**Andrus**, 667 F 2d 931, 938 (CA10 1982). "FOIA was designed to insure an informed citizenry, which is vital to the functioning of a democratic society".

13. The Supreme Court has suggested that certain types of government misconduct is forbidden. In **Hampton v. United States**, 425 US 484, 493, n. 4 (1976); **United States v. Archer**, 486 F 2d 670, 677 (CA2 1973), was cited where the convictions were reversed with instructions to dismiss the indictment, "It would be unthinkable, for example, to permit government agents to instigate robberies and beatings merely to gather evidence to convict other[s]".

#### THE PARTIES

14. Plaintiff, Patricia Thyer, is a 62 year old prisoner, who is presently incarcerated at the Federal Correctional Institution, 501 Capital Circle, NE, Tallahassee, Florida 32301

15. Defendant, United States Department of Justice Office of Information Policy, is a department within the executive branch of the United States government. Defendant is an agency of the United States within the meaning of 5 USC §552(f)(1).

#### JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action and personal jurisdiction over defendant pursuant to 5 USC §§552(a)(4)(B) and 552(a)(6)(E)(iii). This Court also has jurisdiction pursuant to 28 USC §1331 and 5 USC §§701-706.

17. Venue is premised upon defendant's location in Washington, D.C., and is proper in this district under 5 USC §552(a)(4)(B).

#### FACTS

18. Plaintiff, Patricia Thyer, was married July 17, 1988, to David

Thyer, who had two young sons, 4 year old Christopher and 8 year old Michael, which Patricia Thyer raised for him.

19. During the marriage, Plaintiff Thyer's parents loaned approximately \$500,000 to her and her husband, David Thyer, for the purchase of a farm in Kansas and a farm supply business. The deed to the farm was placed in Plaintiff Thyer's parent's names, Robert and Joyce Stanton.

20. Plaintiff Thyer also provided full-time care for David Thyer's father, Cecil, who after he had a stroke in 1993, moved in with them.

21. Due to physical abuse of the children by David Thyer, Plaintiff Thyer filed for divorce on January 11, 1999. Based upon unpaid loans from her parents, Plaintiff Thyer obtained a \$594,000 divorce decree judgment on March 29, 1999, in the District Court of Crawford County, State of Kansas in Case No: 1999D00021P.

22. In 2000, Christopher Thyer had a car accident, causing him to break his back and become a paraplegic restricted to a wheelchair. Plaintiff Thyer and her ex-husband, David Thyer, resumed living together.

23. In 2001, the farm in Kansas was sold and the Thyers moved to Mountain Grove, Missouri. The proceeds from the farm, which had gone to Plaintiff Thyer, were used to purchase three parcels of land in Missouri--two parcels containing 390+ acres in Wright and Texas Counties, and a third parcel comprising 7.44 acres and a house in Texas County. The deeds were placed in Plaintiff Thyer's name only.

24. In March, 2003, Cecil Thyer passed away. Michael Thyer had stayed in Kansas with Christopher moving back to Kansas after graduating from high school in May, June of 2003.

25. David Thyer wanted to move back to Kansas to be near his sons, except Plaintiff Thyer did not want to move. David Thyer threatened

to kill Plaintiff Thyer if she did not sign over the deeds to the real estate, therefore, on October 20, 2003, the deeds to all real estate were placed in his name only.

26. In April, 2004, David Thyer advised Plaintiff Thyer he was leaving her.

27. On May 3, 2004, Plaintiff Thyer visited attorney David Pointer at the Pointer Law Office for the purpose of executing the \$594,000 divorce decree judgment, as shown by an "Initial Client Intake Sheet" and May 5 letter requesting more information from the Pointer Law Office, P.C., to have the real estate placed back in Plaintiff Thyer's name only.

28. When Plaintiff Thyer advised David Thyer about her appointment with the attorney and the purpose of the visit, David Thyer goes berserk, screaming at her, telling her she would get nothing, he would "put her some place where she could not get out", and then he attacked her, beating her, blackening both eyes and nearly breaking her back.

29. David Thyer purchases a commercial meat saw, telling Plaintiff Thyer he would use it on her after he killed her, letting the dogs and coyotes eat her after he threw pieces of her at the side of the road, because it was "all she was good for". David Thyer further insists that if Plaintiff Thyer did not contact his friend, Wendell Cook, she would get "worse" the next time, including that of the meat saw.

30. When Plaintiff Thyer did not immediately contact Wendell Cook, he contacted her, providing a number that she was to contact.

31. In Criminal Case No: 04-3105-01-CR-S-RED, filed in the Western District of Missouri, against Plaintiff Thyer as defendant, the "Factual Basis for Guilty Plea" states:



"During the week of June 21, 2004, the Wright County Sheriff contacted the South Central Drug Task Force needing assistance with a murder-for-hire case. Through an informant, the Task Force provided Deason's undercover pager number to defendant. On Saturday, June 25, 2004, the defendant contacted Deason and arranged a meeting for Monday, June 28, 2004 (R. 42, p.2).

32. Plaintiff Thyer is held without bond. Michelle Nahon, public defender, is court-appointed to Plaintiff Thyer, who recommends she plead guilty.

33. Plaintiff Thyer contacts David Pointer to have him proceed to execute recovery of all of the real estate based upon the divorce decree settlement. On August 13, 2004, an "Engagement Letter and Contingent Fee Agreement" is signed for "Execution on Judgment of Dissolution", where the fee is stated to be 33% of the "value of the gross amount recovered"<sup>1</sup>.

34. On November 29, 2004, a Petition for Filing Foreign Judgment, as based upon the divorce decree judgment previously awarded in Crawford County, Kansas is filed in Texas County, Missouri, opening Case No: CV8-04-542-CC, by attorney, Susan Faust, an associate of David Pointer. An identical filing is made by attorney Faust in Wright County, Missouri, opening Case No: CV504-542D<sup>2</sup>.

35. On January 25, 2005, Glenn B. Adler, Sheriff of Wright County, Missouri, signs a "Notice of Levy on Real Estate" for the parcel of land comprising half of the 390+ acres on behalf of Patricia S. Thyer, Plaintiff. The "amount of debt in the execution" was stated to be \$297,000 and the "amount of interest to date" was \$97,349.54.

36. On January 25, 2005, Carl D. Watson, Sheriff of Texas County, Missouri, signs a "Notice of Levy on Real Estate" for the parcel of land comprising the other half of the 390+ acres on behalf of Patricia S.

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<sup>1</sup> In the initial fee agreement, Plaintiff Thyer understood she was to obtain two-thirds of the value of the properties, and one-third of the value to go to the Pointer Law Office with it to be configured that the parcel with the house and 7.44 acres be recovered for her in its entirety.

Thyer, Plaintiff. The "amount of debt in the execution" was stated to be \$297,000, and the "amount of interest to date" was \$97,349.54.

37. On February 2, 2005, a "Notice of Sale" is filed in Texas County and Wright County, Missouri, by the Pointer Law Office, P.C.

38. On February 9, 2005, a "Motion to Dismiss" and "Motion for Stay", is filed in Texas County and Wright County by attorney Michael Anderson for Defendant, David Thyer.

39. On March 17, 2005, Carl D. Watson, Texas County Sheriff, signs a "Sheriff's Deed", which conveys all of the right and title to the real estate to Patricia Thyer and Pointer Law Office, P.C., for "the price and sum of Sixty Thousand and no/100 Dollars".

40. On March 17, 2005, Glenn B. Adler, Wright County Sheriff, signs a "Sheriff's Deed", which conveys all of the right and title to the real estate listed to Patricia Thyer and Pointer Law Office, P.C., for the "price and sum of Forty Thousand and no/100 Dollars".

41. On March 18, 2005, David Pointer's Office has the Clerk of Courts from the U.S. District Court in Springfield, Missouri, fax over a copy of Plaintiff Thyer's indictment.

42. On March 20, 2005, an "Engagement Letter and Flat Fee Agreement" is signed by Plaintiff Thyer with Susan Faust of the Pointer Law Office, where compensation is stated to be:

"Client will grant warranty deed to two-thirds interest in 390+ acres tract in Texas and Wright Counties. Attorney will spend up to \$70,000 in expenses in criminal and/or related civil cases. To extent less than \$70,000 is spent, attorney will refund balance to client. It is our firm's and Client's intent that this fee constitute full compensation for services through **trial** and **disposition**". "Client specifically authorizes retention of John Picerno" as "outside counsel in this matter".<sup>3</sup>.

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<sup>2</sup> Copies of the fee contracts and documents utilized to execute the divorce decree judgment were not obtained until December 11, 2006, after Plaintiff Thyer files a complaint against attorney David Pointer with the Missouri Bar Assoc.

<sup>3</sup> At the same time, Plaintiff Thyer is asked to sign a number of other empty

43. On March 25, 2005, the docket for the criminal case shows there was an entry of appearance by attorney Susan Faust of the Pointer Law Office and attorney, John A. Picerno.

44. On April 5, 2005, a court order in the criminal case shows the judge allowing public defender, Michelle Nahon, to withdraw and attorneys Faust and Picerno to act as attorneys of record.

45. Records obtained from the Pointer Law Office show that they hired attorney John Picerno for \$30,000 with a \$10,000 down payment made on March 23, 2005.

46. On April 5, 2005, David Pointer visits Plaintiff Thyer, having her execute General Warranty Deeds to the Pointer Law Office, P.C., for the two parcels comprising 390+ acres.

47. On April 6, 2005, David Pointer hires attorney Brian Woods in Hesston, Kansas, to appear in Crawford County, Kansas, regarding the March 18, 2005, "Motion to Vacate Judgment and Release Judgment of Record", which was filed there on March 28, 2005, in regards to the Divorce Decree Judgment.

48. On May 10, 2005, David Pointer writes Plaintiff Thyer advising "we won" the Kansas lawsuit.

49. On May 26, 2005, attorney John Picerno wrote Plaintiff Thyer advising her he would not take the case to trial and her requested defenses, including entrapment was **not** something a jury would believe, and battered spouse syndrome was **not** admissible in court.

50. At the same time, Plaintiff Thyer suffered a stroke, rendering her unable to seek legal assistance elsewhere.

51. On June 2, 2005, the docket for the criminal case shows Plaintiff

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3 (continued) forms, including a General Durable Power of Attorney.

Thyer's plea was changed from not guilty to guilty.

52. The Plea Agreement contains a "Waiver of FOIA Request", which states as follows:

"The defendant waives all of her rights, where asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including without limitations, any records that may be sought under the Freedom of Information Act, 5 U.S.C. §552, or the Privacy Act of 1974, 5 U.S.C. §552a"

(R. 42, ¶17, p. 14).

53. On September 6, 2005, a Presentence Investigation Report ("PSI"), was prepared in which it stated in regards to the divorce decree judgment, "Both the defendant and David Thyer reported that the \$594,000 was a fictitious amount that neither of them had and that David Thyer had no intention of ever paying the defendant this amount" (¶61).

54. On September 23, 2005, an Addendum to the PSI states that in response to Paragraph 61, "The defendant denies that she was ever involved in a plan to place a fictitious amount of money onto the divorce decree" to which the "Probation office's Response was:

The probation office first became aware of the information contained in Paragraph 61 during the defendant's presentence interview. The defendant is the one who initially disclosed this information to the probation office. The information was verified through court records and through a telephone conversation with David Thyer. As such, the information remains unchanged.

55. The Plea Agreement and Presentence Investigation Report had represented motive as follows:

"David Thyer identified several documents. These include... a premium statement addressed to defendant's address for a life insurance policy on David's life of which David was unaware".

(R. 42, p. 3-4; R. 46, ¶25).

56. In the Defendant's Objection to Presentence Investigation Report",

"The defendant states that the life insurance policy was taken out in the 1990's and that it was from the Masonic Lodge. David Thyer knew of the policy, as he had to sign the quarterly premium payment notice with the payment. The beneficiaries were Pat, Mike, and Chris Thyer".

(R. 46, ¶25).

57. Plaintiff Thyer states that the amount of the life insurance policy described in Paragraph 54 and 55 on David Thyer was \$250,000 of accidental life and dismemberment, with three equal beneficiaries, Patricia, Michael and Christopher Thyer.

58. **Nowhere** on the record is the amount of the life insurance policy listed.

59. According to the PSI, the United States Sentencing Guidelines ("USSG"), were calculated as follows: 32 for the base offense level, with a 3 point level reduction for acceptance of responsibility, resulting in a total offense level of 29 (R. 46, ¶¶30-41). Plaintiff Thyer had no criminal history points, resulting in a criminal history category of I (R. 46, ¶44). A 29 has a sentencing range of 87 to 108 months (R. 46, ¶65).

60. On November 9, 2005, Plaintiff Thyer was sentenced to 87 months on Count One, in violation of 18 USC §1958, and 60 months consecutive for Count Two, in violation of 18 USC §924(c), for a total of 147 months (R. 51).

61. After Plaintiff Thyer is shipped to FCI Tallahassee, she writes attorney David Pointer requesting funds and an update, she receives a letter from him on March 16, 2006, refusing to pay the funds out of her "remaining trust funds" as requested.

62. On March 24, 2006, when Plaintiff Thyer requests attorney David Pointer provide an "itemized statement" and advises she would be sending

"instructions" as to a "designee to whom you can send the funds currently held by your firm", he sends her a "Release" to be signed before he would effectuate the transfer.

63. A statement sent by attorney David Pointer indicates that Plaintiff Thyer was credited \$70,000 for her share of the 390+ acres of real estate in Texas and Wright Counties and that \$12,841.06 was deducted from that for expenses such as fees to "Woods Law Firm", leaving a balance of \$57,158.94.

64. On June 7, 2006, Plaintiff Thyer advises attorney David Pointer that she would **not** sign the "Release" unless he transferred the "lien" held by Pointer Law Office on the third parcel of real estate, which was the "house, outbuildings, and approximately 8 acres" to her Power of Attorney.

65. On August 1, 2006, attorney David Pointer writes Plaintiff Thyer a letter, stating:

"I want to clarify the lien situation. When we managed (over David's opposition) to record your Kansas judgment in Missouri, that judgment became a lien on all property owned by David in the counties where it was recorded. This is referred to as a "judgment lien". In your earlier letter, you asked that I assign my firm's lien to you. However, the judgment is already held by you (not our firm). That is why I stated that our firm does not have a lien on the land. We do not have it; you do. To the extent we might somehow have a lien, we are willing to transfer it to you as evidenced on the paper-work I prepared at your request".

66. On August 29, 2006, Plaintiff Thyer files a complaint with the Missouri Bar Association about attorney David Pointer, opening file No: 06-1726-XV.

67. On September 11, 2006, Plaintiff Thyer writes the Register of Deeds requesting to know the owner of the real estate from 2000 forward.

68. On September 22, 2006, attorney David Pointer sends a check for

\$55,713.00 to the designee Plaintiff Thyer had stated.

69. On October 5, 2006, the Wright County Recorder of Deeds responds, indicating they would not provide the information requested, "You will need to contact a title company or stop by any time to do your own title search".

70. On September 25, 2007, in the Western District of Missouri, defendant Kari Brown was sentenced to 87 months with the same Count One as Plaintiff Thyer in violation of 18 USC §1958 in Case No: 06-03034-01-CR-S-RED. Kari Brown was shipped to FCI Tallahassee where she met Plaintiff Thyer.

71. Kari Brown lived approximately 40 miles from Plaintiff Thyer, and had been arrested on March 14, 2006, after her husband, Randy Brown filed for divorce December 21, 2005 in Case No: 05AM-FC00185. In the month of January, 2006, Kari Brown had to call enforcement out to the house five times for Randy Brown abusing the children and threatening to kill her, except Deputy Sheriff Eddie Johnson of the Alton Police Department told Kari Brown if she called any more times for help, he would call Family Services and have them take her children away from her. On February 8, 2006, Requests for Hearing for Kari Brown and her 3 children for a Protection Order against Randy Brown was filed in Case No: 06AM-FC00016-19, except it was dismissed by the Court as a dissolution action was pending.

72. The record shows Kari Brown repeatedly refused to plead guilty for over 14 months, requesting the defenses of self-defense, battered wife syndrome, manufacture of federal jurisdiction, and expressing her fear Randy Brown would abuse her children (Affidavit of Elise Barker, counsel for Kari Brown dated July 17, 2008, as filed in Case No: 08-3186-CV-S-RED-P, Pro Se Motion to Vacate).

73. Kari Brown's Plea Agreement also had a "FOIA Waiver" clause (R. 47).

74. On August 10, 2007, Plaintiff Thyer's motion to vacate pursuant to 28 USC §2255 was denied by the Western District of Missouri (Case No: 6:06-cv-03343-RED).

75. On December 10, 2007, Plaintiff Thyer hires attorney, Mark Rector, in Lebanon, Missouri, to investigate her "former husband's property holdings in [Rector's] area" so that "we can execute on the same to collect the funds that are due you under the terms and conditions of your divorce decree".

76. On January 4, 2008, a mediation teleconference was held, as arranged by the Fee Dispute Resolution Committee of the Missouri Bar Association, in which attorney David Pointer admits that with Plaintiff Thyer, he valued the 390+ acres in Texas and Wright Counties at \$100,000 total. In order to settle the issue where the house and 7.44 acres in Texas County were not executed upon or recovered as had been previously agreed, attorney David Pointer offers to "execute upon any real property currently owned by David Thyer in Wright and/or Texas Counties in Missouri to help satisfy the judgment", as stated in his offer dated January 11, 2008.

77. On January 25, 2008, attorney Mark Rector provides copies of two General Warranty Deeds, one dated April 5, 2005, where Plaintiff Thyer conveys her "undivided two-thirds interest" in the 160 acres in Wright County to Pointer Law Office for **One Dollar**, and another dated April 25, 2005, where Pointer Law Office sold its interest in the same 160 acre property to Little Creek Acres, LLC., for **One Dollar**. Attorney Mark Rector further advises Plaintiff Thyer that there was a Deed of Trust to Town and Country Bank in the amount of \$200,000 on this property.

78. The Missouri Secretary of State indicates that David B. Pointer created Little Creek Acres, LLC., on March 25, 2005.



79. On March 31, 2008, attorney Mark Rector provides Plaintiff Thyer with copies of a General Warranty Deed where on April 20, 2005, David Thyer, conveyed the interest in the house and 7.44 acres in Texas County to Christopher Thyer for One Dollar; a Warranty Deed where on September 21, 2005, David Thyer conveyed this same property to Burl and Linda Miller; and a Real Estate Deed of Trust from the Miller's to Century Bank of the Ozarks in the original amount of \$116,627.65.

80. According to the World Book Encyclopedia (2010 Ed), the population of Mountain Grove, Missouri, where the real estate was located was 4,575.

81. On April 10, 2008, Plaintiff Thyer declined to accept attorney David Pointer's offer of settlement.

82. On September 15, 2008, Plaintiff Thyer requested attorney Mark Rector to obtain a copy of the original criminal complaint or police report filed against her in Wright County, Missouri, which served as the basis of the federal case against her.

83. In 2007 and 2008, the designee to whom Plaintiff Thyer granted control of the funds, which were transferred from attorney David Pointer, wrote checks to herself, virtually exhausting them.

84. In 2007 and again in 2009, Plaintiff Thyer files Freedom of Information Act ("FOIA") requests and appeals with the Executive Office of United States Attorneys, FBI, Homeland Security, and Office of Information Policy, requesting a copy of the criminal complaint filed against her in or around June, 2004, by the Wright County Sheriff's Department, which served as the basis of the federal case against her. In the May 12, 2009, FOIA request, Plaintiff Thyer adds a request seeking any documents in support of a "threat to deter licensed attorney Mark E. Rector...

from obtaining copy of the original police report or criminal complaint allegedly filed against me in Wright County, Missouri, Sheriff's Office, as Mr. Rector had accepted a retainer from me to do".

85. On October 19, 2009, attorney Mark Rector advises Plaintiff Thyer a revival of her divorce decree judgment was granted in July, 2010, making **no** mention of the request to obtain a copy of the criminal complaint.

86. On June 2, 2011, Kari Brown received notice while incarcerated at FCI Tallahassee that the Missouri Department of Social Services, Children's Division, that allegations of sexual abuse, physical abuse and neglect were received against Randy Brown against his granddaughter Brittany Brown and substantiated. During her incarceration, Randy Brown sought full custody of their 3 children and in spite of fighting the case, Kari Brown lost.

87. On July 17, 2011, Kari Brown submits a pleading regarding "newly found facts" in regards to her criminal case, to show it was a "set-up" including the complaint from the Missouri Department of Social Services (R.1, Case No: 6:11-cv-03320-RED). The Court responds assigning her an attorney to file a successive motion to vacate pursuant to 28 USC §2255.

88. Plaintiff Thyer has exhausted her administrative remedies.

#### FIRST CAUSE OF ACTION

89. The FOIA waiver clause in the Plea Agreement should be set aside due to substantial violations of Plaintiff Thyer's constitutional rights and the evidence of governmental wrongdoing in her case.

Plaintiff Thyer's Fifth Amendment right to due process and Sixth Amendment right to effective assistance of counsel without a personal conflict of interest were violated. Plaintiff Thyer was coerced to enter into a Plea Agreement, which included a FOIA waiver, providing

no benefit that a blind plea would not otherwise have provided, this being **after** having unnecessarily been induced to spend hundreds of thousands of dollars worth of real estate to go to trial. In addition to Plaintiff Thyer having entered into a Plea Agreement at the coercion of counsel operating under a substantial conflict of interest, prosecutors acted to circumvent a preexisting lawful state divorce financial settlement judgment, as reinforced by the state courts when contested **during** the criminal process. Prosecutors engaged in fraud upon the federal district court by suppressing material exculpatory facts and evidence, and aiding and abetting their so-called "victim", i.e., David Thyer, who had engaged in the criminal activities of assault, threats, intimidations, and fraudulent conveyance against Plaintiff Thyer. As shown from the record, evidence in support of her claims of ineffective assistance, prosecutorial misconduct, manufacture of federal jurisdiction, and entrapment was not available to Plaintiff Thyer until **after** her \$2255 motion to vacate was denied.

#### SECOND CAUSE OF ACTION

90. A copy of the criminal complaint made in Wright County, which was used as the basis of the federal criminal case, which is a matter of public record, should be provided to Plaintiff Thyer.

It is a violation of FOIA for defendant's failure to have promptly made available this document as requested. See 5 U.S.C. §552(a)(6)(E) and §552(a)(3)(A). A criminal complaint is a matter of public record and should be available upon request to view in a free society to prevent the abuses of official authority, which have occurred in Plaintiff Thyer's case. Such a document may not be secreted away via a FOIA waiver, after never having been produced, particularly when it con-

stitutes the basis for a plea agreement as the probable cause in a criminal case.

The courts have found that the public interest in disclosure under FOIA is greatest when there is evidence of governmental wrongdoing. For a middle-aged housewife with no criminal background to be subjected to assault and death threats by a perpetrator protected by the federal government so that her lawfully obtained divorce decree judgment can be circumvented is a matter of public interest in that such criminal activity and governmental wrongdoing could occur against anyone. The tragic consequences of such governmental wrongdoing in aiding and abetting such criminal activity is shown by the Kari Brown case in which innocent little children she was desperate to protect are given to a sexual predator and physically and emotionally damaged.

In addition to requesting a copy of the criminal complaint from federal sources, Plaintiff Thyer has also requested a copy of it directly from the Wright County Sheriff's Office and from the Missouri Attorney General's Office, as well as retained attorney Mark Rector to obtain it, all to no avail. If there was no governmental wrongdoing involved in the complaint, a copy should have been forthcoming from these requests.

Media reports and admittance by FBI employees indicate that not **all** evidence and documents are uploaded into the FBI's Computerized Record System. Specifically, that evidence goes first into a "I-Drive", and some evidence, evidence that is embarrassing to the Bureau, **never** is uploaded to the CRS. There is also another Drive known as the "S-Drive", which is a secret record maintenance system.

It is further alleged David Thyer may have been improperly made a "confidential informant" in an abuse of Dept. of Justice Guidelines,

which a copy of this criminal complaint may aid in disclosing. In a study issued by the Office of Inspector General in September, 2005, a random sampling of Confidential Informant cases during the 1990's disclosed rampant abuses of the Department of Justice Confidential Informant guidelines by the FBI. The report found that in 87% of the cases sampled, the FBI did **not** comply with Department of Justice guidelines, including failing to get permission to allow their Confidential Informant to engage in **illegal activity**. Another fact revealed by the report was that the FBI routinely uses lawyers as confidential informants. Given the fact David Thyer engaged in fraudulent conveyance to transfer the house and 7.44 acres to his son, Christopher, in April, 2005, and then proceeded to sell it prior to the final version of the Presentence Investigation Report in a small town with only 4,575 in population strongly suggests both prosecutors and the defense attorneys engaged in collusion to deceive the federal district court and Plaintiff Thyer, regarding their "victim".

#### THIRD CAUSE OF ACTION

91. Plaintiff Thyer alleges she should also have been provided with a **Vaughn Index** when defendant denied her FOIA request. See **Vaughn v. Rosen**, 484 F 2d 820 (D.C. Cir. 1973).

#### RELIEF REQUESTED

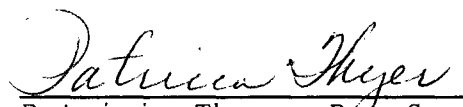
WHEREOF, Plaintiff Thyer respectfully requests that this Court:

- (a) Order that the FOIA waiver be set aside in regards to the criminal complaint and a copy be provided as requested;
- (b) Order that any authorization or documents issued relevant to not providing attorney Mark Rector with access to the criminal complaint be provided as requested;

(c) Order that defendant provide a **Vaughn Index**.

Respectfully submitted,

Date: 3/22/12

  
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